

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOX NEWS NETWORK, L.L.C.,

Plaintiff,

-against-

ECHOSTAR SATELLITE L.L.C.,

Defendant.

No.: 07 CV 11314 (RJH) (FM)

AMENDED COMPLAINT

Plaintiff Fox News Network, L.L.C. ("Fox News"), by its undersigned counsel, alleges upon personal knowledge as to itself, and upon information and belief as to all other matters, the following:

NATURE OF THE ACTION

1. Fox News brings this Complaint seeking to recover damages from defendant EchoStar Satellite L.L.C. ("EchoStar") as a result of EchoStar's breach of an agreement between Fox News and EchoStar, dated November 30, 1998 (the "Affiliation Agreement").

2. Fox News is the provider of the Fox News Channel ("FNC"), the number one-rated 24 hour / 7 days per week national cable news channel that, according to Nielsen Media Research, is currently available to approximately 92 million households. EchoStar, through its DISH Network, is a provider of satellite delivered digital television to customers across the United States. EchoStar offers several different programming packages to its customers. Each programming package consists of a different combination of digital audio and video channels.

3. The Affiliation Agreement requires EchoStar to distribute FNC in EchoStar's "most widely distributed package of programming services" (the "Distribution Requirement"), and to use "commercially reasonable efforts to maximize subscribers to and viewership of [FNC] among all of its Subscribers" (the "Subscriber Maximization Requirement"). Despite the

Distribution Requirement, since in or about January 2007, EchoStar has distributed FNC in its second most widely distributed programming package, a 200-channel package known as “America’s Top 200” package (“AT 200 (2007)”). Moreover, despite the Subscriber Maximization Requirement, by not distributing FNC in its most widely distributed programming package, EchoStar has failed to use commercially reasonable efforts to maximize subscribers to and viewership of Fox New among all its subscribers. Thus, since in or about January 2007, EchoStar has failed to comply with both the Distribution and Subscriber Maximization Requirements.

4. The Affiliation Agreement further provides for liquidated damages in the event of EchoStar’s breach of the Distribution Requirement. Accordingly, Fox News seeks liquidated damages pursuant to the Affiliation Agreement for EchoStar’s breach of the Distribution Requirement as well as damages for EchoStar’s breach of the Subscriber Maximization Requirement.

THE PARTIES

5. Fox News is a limited liability company organized and existing pursuant to the laws of Delaware. Its principal place of business is located in New York, New York. Fox News has four members: (1) a Delaware corporation with its principal place of business in California; (2) a Delaware corporation with its principal place of business in New York; (3) a Delaware corporation with its principal place of business in Pennsylvania; and (4) a Delaware corporation with its principal place of business in California.

6. EchoStar is a limited liability company organized and existing pursuant to the laws of Colorado, and was formerly known as EchoStar Satellite Corporation. Its principal place of business is located in Englewood, Colorado. According to its most recent corporate filings,

the sole member of EchoStar is EchoStar DBS Corp., a Colorado corporation with its principal place of business in Englewood, Colorado.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because EchoStar is a resident of this district.

FACTUAL BACKGROUND

9. On or about November 30, 1998, Fox News and EchoStar entered into the Affiliation Agreement.

10. The Affiliation Agreement requires EchoStar to distribute FNC in EchoStar's "most widely distributed package of programming services." The Affiliation Agreement states that EchoStar's then "current [as of November 30, 1998] package which complies with [this Distribution Requirement] is referred to as the 'America's Top 100' package." (Emphasis added.)

11. Separately, the Affiliation Agreement requires EchoStar to use "commercially reasonable efforts to maximize subscribers to and viewership of [FNC] among all of its Subscribers."

12. Since the parties entered into the Affiliation Agreement, EchoStar on several occasions has added channels to the "America's Top 100" package referred to in the Affiliation Agreement ("AT 100 (1998)"), such that today that package is now the 200-channel package known as AT 200 (2007).

13. AT 100 (1998), which is now AT 200 (2007), has not been EchoStar's most widely distributed programming package since at least in or about January 2007, if it ever was. Rather, since in or about January 2007, EchoStar's most widely distributed programming package has been a 100-channel package known as the "America's Top 100" package ("AT 100 (2007)").

14. EchoStar has not distributed FNC in AT 100 (2007) since in or about January 2007 in breach of the Affiliation Agreement. Instead, since in or about January 2007, EchoStar has distributed FNC in AT 200 (2007), its second most widely distributed package of programming services.

CLAIM FOR RELIEF

First Claim for Relief **(Breach of Contract – Distribution Requirement)**

15. Fox News hereby incorporates by reference the allegations contained in Paragraphs 1 through 14 as if fully set forth herein.

16. On November 30, 1998, Fox News and EchoStar entered into the Affiliation Agreement, which is a valid and binding contract. Pursuant to the Affiliation Agreement, EchoStar is required to distribute FNC in EchoStar's "most widely distributed package of programming services."

17. Fox News has fully performed all of its obligations under the Affiliation Agreement.

18. In breach of the Distribution Requirement of the Affiliation Agreement, since in or about January 2007, EchoStar has not distributed FNC in its most widely distributed package of programming services.

19. Thus, EchoStar's failure to distribute FNC in its most widely distributed package of programming services is a material breach of the Distribution Requirement of the Affiliation Agreement that has resulted in Fox News sustaining significant damages.

20. Although the amount of Fox News's damages is difficult to determine precisely, the contract has a liquidated damages provision fixing damages in the event of EchoStar's breach of the Distribution Requirement. This provision was intended to approximate Fox News's probable loss in the event of EchoStar's breach of the Distribution Requirement.

21. Under the liquidated damages provision of the Affiliation Agreement, each month that EchoStar is not in compliance with the Distribution Requirement of the Affiliation Agreement, it is required to pay Fox News "an amount equal to two (2) times the applicable Service Subscriber fee multiplied by the shortfall in Service Subscribers delivered." The amount of liquidated damages pursuant to this provision will be determined at trial, but is believed to be at least \$50 million.

22. Under the Affiliation Agreement, EchoStar is required to pay interest at a rate of 1-1/2% per month for all past due payments.

23. Under the Affiliation Agreement, EchoStar has agreed to indemnify Fox News for, *inter alia*, "costs and expenses (including reasonable attorney's fees and court costs . . .), arising out of" EchoStar's breach of the Affiliation Agreement.

Second Claim for Relief
(Breach of Contract – Subscriber Maximization Requirement)

24. Fox News hereby incorporates by reference the allegations contained in Paragraphs 1 through 14 as if fully set forth herein.

25. On November 30, 1998, Fox News and EchoStar entered into the Affiliation Agreement, which is a valid and binding contract. Pursuant to the Affiliation Agreement,

EchoStar is required to use “commercially reasonable efforts to maximize subscribers to and viewership of [FNC] among all of its Subscribers.”

26. Fox News has fully performed all of its obligations under the Affiliation Agreement.

27. In breach of the Subscriber Maximization Requirement of the Affiliation Agreement, since in or about January 2007, by not distributing FNC in its most widely distributed package of programming services, EchoStar has not used commercially reasonable efforts to maximize subscribers to and viewership of FNC among all of its subscribers.

28. Thus, EchoStar’s failure to distribute FNC in its most widely distributed package of programming services is a material breach of the Subscriber Maximization Requirement of the Affiliation Agreement that has resulted in Fox News sustaining significant damages in an amount to be determined at trial, but believed to be at least \$50 million.

29. Under the Affiliation Agreement, EchoStar is required to pay interest at a rate of 1-1/2% per month for all past due payments.

30. Under the Affiliation Agreement, EchoStar has agreed to indemnify Fox News for, *inter alia*, “costs and expenses (including reasonable attorney’s fees and court costs . . .), arising out of” EchoStar’s breach of the Affiliation Agreement.

WHEREFORE, Fox News demands judgment in its favor and against EchoStar:

(a) on Fox News’s First Claim, awarding Fox News liquidated damages -- in an amount to be determined at trial, but not less than \$50 million -- for all losses and damages (and pre- and post-judgment interest thereon) incurred as a consequence of EchoStar’s material breach of the Distribution Requirement of the Affiliation Agreement;

(b) on Fox News’s Second Claim, awarding Fox News damages -- in an amount to be determined at trial, but not less than \$50 million -- for all losses and


damages (and pre- and post-judgment interest thereon) incurred as a consequence of EchoStar's material breach of the Subscriber Maximization Requirement of the Affiliation Agreement;

(c) awarding Fox News the costs and disbursements of this action, including, without limitation, attorneys' fees and expenses; and

(d) granting Fox News such other and further relief as this Court may deem appropriate.

Dated: February 19, 2008

VINSON & ELKINS L.L.P.

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SOUTHERN DISTRICT OF NEW YORK

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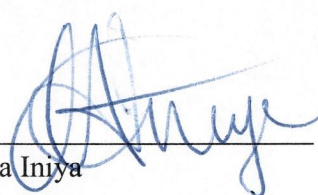
CERTIFICATE OF SERVICE

JURY TRIAL DEMANDED

I, Kilima Iniya, certify that on February 19, 2008, I served the Amended Complaint in this action on defendant EchoStar Satellite L.L.C. by leaving a true copy thereof with a clerk in the offices of its attorney, Charles L. Kerr, at the attorney's office located at 1290 Avenue of the Americas, New York, NY at 6:42 PM.

I certify that under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
February 20, 2008



Kilima Iniya